

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

SEP 12 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SHANNON C.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY and
CAMERON G.,

Appellees.

2 CA-JV 2008-0045

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18008200

Honorable Ted B. Borek, Judge

AFFIRMED

Edith A. Croxen

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Michelle R. Nimmo

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Shannon C. appeals from the juvenile court’s order terminating her parental rights to her son Cameron, born in 2006, based on abandonment, mental illness or history of chronic substance abuse, and length of time Cameron has spent in a court-ordered, out-of-home placement.¹ See A.R.S. § 8-533(B)(1), (B)(3), (B)(8)(a) and (b). Shannon does not challenge either the grounds for termination or the court’s best-interests determination on the merits. Rather, she asks us to “determine the specific issue of whether the juvenile court’s placement of Cameron G.[] with the paternal grandfather is in the minor child’s best interests.” (Emphasis omitted.) For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “On review, we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court’s ruling. See *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d

¹Cameron’s father, whose parental rights were also terminated, is not a party to this appeal.

682, 686 (2000). In October 2006, when Cameron was three days old, the Arizona Department of Economic Security (ADES) took custody and placed him with his paternal grandfather and step-grandmother (grandparents), where he has remained. Later that month, ADES filed a dependency petition alleging, inter alia, that Cameron had tested positive for methamphetamine at birth. Shannon admitted the allegations in an amended dependency petition, including that she had “a problem” with the use of illegal drugs, she had a history with Child Protective Services (CPS) in New Mexico, she had relinquished her rights to another child, and she anticipated losing her rights to yet another one of her children. In addition, although not alleged in the dependency petition, the record shows that Shannon had two more children who likewise were not in her custody.

¶4 The juvenile court adjudicated Cameron dependent in December 2006. ADES provided various services to Shannon with the goal of family reunification. She does not challenge the appropriateness of those services on appeal. Shannon left Arizona for New Mexico in early 2007, subsequently failing to comply with most of the case plan requirements. Tests showed that she continued to use illegal drugs including amphetamine, methamphetamine, cocaine, and marijuana. At a permanency planning hearing in November 2007, the court changed the case plan goal to severance and adoption and ordered ADES to file a motion for termination. Shannon provided no financial support for Cameron, nor did she send him any cards, gifts, or letters in the year preceding the severance hearing,

which took place in February and March 2008. The record also shows that Shannon did not visit Cameron for at least six months before the hearing.

¶5 Following the severance hearing, at which various witnesses testified, the juvenile court issued a detailed ruling granting the motion to terminate both parents' rights on all four grounds alleged and finding severance was in Cameron's best interests. Shannon "does not dispute the juvenile court's findings as to the grounds for termination" but, rather, "disputes that termination is in the best interests of the child for the reason that the child's placement is inappropriate for long term care of the child." Specifically, Shannon challenges the grandfather's ability to care for Cameron because of health issues related to the grandfather's obesity and resultant limited mobility and because he admittedly suffers from depression, a condition for which he takes medication.

¶6 Notably, Shannon acknowledges that "the majority of evidence in this [c]ase indicates it may be *more* in Cameron's best interests to be placed with the grandparents" than with her. Although she had questioned the appropriateness of temporary placement with the grandfather, Shannon argues that, because the juvenile court did not determine whether such placement was in Cameron's best interests, the court's decision was "manifestly unreasonable and based on untenable grounds." Shannon asks this court to "reverse the lower court's ruling," presumably meaning its severance determination, despite the fact that she does not appear to have challenged the grounds for that ruling.

¶7 Whether the grandfather is an appropriate caregiver for Cameron is not dispositive of the issue whether termination was in Cameron’s best interests. To make the latter determination, the court was required to determine whether Cameron would benefit from termination *or* be harmed if he remained in Shannon’s care. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). In making its assessment, the court could consider whether a current adoptive plan existed, whether Cameron is adoptable, or whether his existing placement is meeting his needs. *Id.*; *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶8 Even assuming that Shannon were actually challenging the juvenile court’s finding that termination of her parental rights was in Cameron’s best interests and that she had made at least an arguable connection between temporary placement and Cameron’s best interests for purposes of § 8-533, there was overwhelming evidence to support the court’s best-interests finding. Shannon herself testified that the grandparents are “wonderful” and that she “would rather [her] son be with [the grandmother] than anybody else.” The father also testified that Cameron “seemed comfortable with [the grandmother] and happy with her.” CPS case manager Eric Nunez, who had visited Cameron monthly since birth, testified that the grandparents’ home is the “only home” Cameron has ever known, that he is comfortable there, and that the grandparents have been able to meet his needs. Nunez also testified that Cameron and his grandfather have “a very bonded and appropriate relationship, a loving relationship that a grandfather usually has with his grandchild.” Nunez believed

that, based on Cameron's age and the absence of any physical or behavioral issues, he is an adoptable child.

¶9 Additionally, evidence was presented that, despite the grandfather's limited mobility, the grandparents are meeting Cameron's needs without the use of day care or additional assistance. The grandmother attested to her husband's ability to care for and interact with Cameron and to take him places. The home study specialist who authored the Kinship Foster Care Assessment Study, which Shannon offered as evidence at the severance hearing, opined that the grandparents were an appropriate placement for Cameron. He noted that, although the grandfather's health issues should be monitored, his condition "gives him the opportunity to stay at home to care for Cameron."

¶10 In its written ruling, the court explained the grounds for its best-interests finding as follows:

This Court finds this is a most egregious case of non-compliance with the case plan despite the best efforts of the C.P.S. caseworker to provide services in both Arizona and New Mexico. The mother's testimony has been incredible, inconsistent, and at times contradictory to other established facts, including her denial of the use of some substances and fluctuation on the need for treatment The mother and father both have spent significant time attacking the capabilities of the placement, the paternal grandfather, due to a disability requiring the use of a wheelchair and an approximately 15 . . . year old shooting incident. They have done virtually nothing to address their own significant substance abuse issues. The Kinship Foster Care Assessment of the paternal grandfather and paternal step-grandmother dated February 15, 2007 . . . address[es] the paternal grandfather's health, amongst other things, and recommends that [the grandparents] be considered

an appropriate placement for Cameron for as long as necessary. The parents' untreated substance abuse issues, abandonment of their child, and total failure to take advantage of services offered to reunify them with their child convinces this Court that grounds for severance have been proven overwhelmingly. Moreover, as Cameron has been placed since birth with loving, caring, capable grandparents willing to adopt him, it would be detrimental for him to be returned to these parents and beneficial for him to be available for adoption by the paternal grandfather and paternal step-grandmother.

¶11 The record is clear that the juvenile court considered and resolved any conflicting evidence regarding the grandfather's health, as it is charged with doing. *See In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987) (as fact-finder in termination proceeding, juvenile court in best position to weigh evidence and judge credibility of witnesses). To the extent Shannon suggests we reconsider that evidence on appeal, we reject her request. "We are mindful that our function on review is not to reweigh the evidence before the juvenile court or supersede its assessment of the evidence with our own." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d 943, 947 (App. 2004).

¶12 Finally, we briefly address Shannon's argument regarding *Oscar O.*, a case in which this court found sufficient evidence to support the termination of a father's parental rights despite the juvenile court's having found severance contrary to the best interests of the children. Shannon urges this court to engage in fact-finding in order to distinguish *Oscar O.* from her case. However, as the state correctly points out, *Oscar O.* stands for the proposition that an appellate court will accept the juvenile court's findings of fact in a

termination matter unless there is no reasonable evidence to support them and will affirm the severance order unless it is clearly erroneous. *Id.* ¶ 4.

¶13 Because the record contains reasonable evidence to sustain the juvenile court's severance order, including its determination that severance was in Cameron's best interests, and because the court's ruling was not clearly erroneous, we affirm the order terminating Shannon's parental rights to Cameron.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge